

FOUR LADS FROM JAIL

Give Evidence of Stolen Goods Depot.

Four Portuguese lads, from 16 to 20 years of age, were taken out of jail yesterday to testify against Ho Sol, indicted for receiving stolen goods. Three of them gave evidence in right smart English, showing the great benefit of the Hawaiian free school system, but the fourth—a Caliban in appearance—when asked if he understood the oath about to be put to him requested an interpreter's assistance. It was then but a few minutes till noon, so that this witness was set aside and A. McDuffie, police officer, substituted.

Alfred Figera, Antone Lewis and Joaquin Silva were the three prison cadets examined. Their stories agreed in a general sort of way to prove the coolest and most businesslike negotiations with Ho Sol before committing a robbery, ending in his agreement to receive goods and pay the robbers a proportion of the value of the booty.

Ho Sol's answer, as related by the boys, when they told him on February 27 that they were going to rob Manuel Pacheco's store in the Magoon block, Kakaako, the same night indicated that there were well-established business relations between the gang of thieves and the defendant.

"All right," was the laconic answer they received from Ho Sol. They told of the robbery and the booty they carried to Ho Sol's "fence" at 3 a. m. on February 28. A case of salmon, several parcels of tobacco, half a box of cigars, cigarettes, etc., made up the invoice. Ho Sol, according to the evidence of the robbers, paid the chief of the band \$7 or \$8 and they went away. Next thing they were in the hands of McDuffie and Deputy Sheriff Chillingworth, with whom they went to Ho Sol's store.

In the afternoon Chillingworth and the victim of the robbery, Pacheco, were called by the prosecution, which rested at 3:25 without deeming the fourth robber's evidence worth the expense of hiring an interpreter.

Officer McDuffie could not remember the date of his arrest of the robbers, but thought it was about the 12th of February. This was such a wide distance from the date the boys gave that Mr. Cathcart, counsel for defendant, moved to throw the evidence out. The motion was overruled for the time being. Later a portion of McDuffie's evidence was struck out, the jury being directed to disregard it.

The following jury was empaneled to try Ho Sol: Edwin Benner, J. H. Craig, James Brown, H. A. Parmelee, Harry Carl, J. W. Bergstrom, C. J. Fisher, John C. Lane, J. J. Dias, G. D. Mahone, Geo. Dillingham, J. A. Lavelle. The trial will be resumed this morning.

M. F. Prosser, Deputy Attorney General, is prosecuting.

JUDGMENT RENDERED.

Judge De Bolt heard without a jury the case of Washington Mercantile Co. vs. Wm. A. Hall, Thayer & Hemenway appeared for plaintiff, and C. W. Ashford for defendant. Judgment was given for plaintiff for \$80 and costs. An exception was noted and notice of motion for a new trial given by defendant.

CALLING OF CALENDAR.

In the calling of jury-waived cases before Judge De Bolt yesterday half a dozen were passed for the time and the following disposition made of others:

Liliuokalani vs. the Inter-Island Telegraph Company and Mele Kahano vs. M. Manuahi were struck from the calendar.

Houghton Mifflin & Company vs. Dr. T. Mitamura, Tong See vs. A. M. Brown, Honolulu Investment Company vs. Helen Rowland et al and Thomas F. McTigue vs. Edward Walsh were continued for the term.

In C. W. Booth vs. Wa Chu et al the appeal was dismissed and Oahu R. & L. Co. vs. Lionel R. A. Hart and Haleakala Hart was set for hearing this afternoon.

KEATING ESTATE DIVISION.

M. D. Monsarrat, commissioner to divide property in the case of Keating vs. Keating, has made his report. The land and house at Kakaohuku, Nuuanu road, are divided by value three quarters to Mrs. Francis Keating and one quarter to James Keating. Valuing the land at \$3400 and the house at \$400, or \$3800 in all, Mrs. Keating's share is \$2100 worth and James Keating's \$700 worth. Of the total area of land, 1.98 acres, Mrs. Keating gets 1.40 acres and the house and James Keating 0.58 acre. Mrs. Keating has the mauka portion with a frontage of 154 feet on Nuuanu road, and James Keating the makai portion with a frontage of 96 feet on the same road. Mr. Monsarrat says that in dividing the property the value of the house and the lay of the divisions have been taken into consideration. Besides being familiar with the property he had made an examination of it since his appointment.

TORRENS LAND TITLE.

Judge Philip L. Weaver has rendered a decision in the Court of Land Registration, confirming and guaranteeing to Rev. Doremus Souder, D. D., the

title to the premises in Prospect street formerly owned by the late John F. Souder.

FENCE INJUNCTION.

William McCandless has filed an answer to the complaint of Territory of Hawaii, for injunction restraining him from obstructing a highway at Palama. He neither admits nor denies that there is a highway from King street to the rice mill of Y. Ahin. He denies that on or about March 11, 1934, he unlawfully obstructed the highway referred to by erecting a fence of posts and rails within the limits of such highway, for a distance of more than 100 feet, and denies that he has erected any fence which constitutes a permanent obstruction to the use of said highway.

"And respondent further answering says," the declaration concludes, "that on or about the 11th day of March, 1934, respondent constructed a fence more than one hundred feet in length, and that said fence was so constructed on land owned in fee by respondent; that there is no highway over said land, and that said fence so constructed as aforesaid is no obstruction to any highway."

COURT NOTES.

The First American Savings & Trust Co. of Hawaii, Ltd., by its attorneys, C. A. and E. A. C. Long, have filed a motion for deficiency judgment against Mary J. Montano and A. A. Montano for \$1919.54.

George A. Davis yesterday filed satisfaction of judgment in his suit for attorney's fee against Mrs. Libana de Nobrega, according to verdict of jury for \$200 and costs. The release is for \$218.

A general denial is filed by defendant in the assumpsit suit of K. Matsumoto vs. Kapiolani Estate, Ltd.

Judge De Bolt appointed W. O. Smith administrator of the estate of Ane Paakaula without bonds.

Lai Sun, indicted for maintaining a lottery scheme, by his counsel, C. C. Bittling, withdrew his plea of guilty and filed a demurrer.

FEDERAL JURY LISTS HAVE BEEN DRAWN

Grand and trial jurors for the coming term of the United States District Court, to open on Monday, October 19, were drawn yesterday as follows:

Grand Jurors—Chas. T. Day, C. Widemann, Chas. Rose, E. Lyman, D. W. Anderson, Wm. Dower, J. O. Carter, Jr., E. B. Freil, W. L. Howard, C. B. Gray, Geo. W. Farr, J. C. Cohen, J. Kaelamakule, W. F. Jocher, J. H. Hare, J. Kennedy, H. Bush, T. B. Lyons, L. R. A. Hart, W. H. Hughes, Dan K. Kamakanihoo, J. Kai, John Markham.

Trial Jurors—James E. Jaeger, Dan K. Kaea, J. B. Battersby, Geo. Hoffman, Chas. Jones, Geo. Copp (Hilo), P. C. Jones, J. P. Kaikaula, Chas. W. Spitz (Lihue), T. W. Hobron, Arthur Johnston, John Crowder, E. E. Hartman, J. D. Kennedy (Hilo), L. C. Hooker, T. R. Mossman, L. D. Kellipio (Hilo), M. A. Gonsalves, A. A. Benson (Hilo), Benj. D. Baldwin (Maui), C. F. Murray, A. W. Van Valkenburg, Ernest Hutchinson, F. Wundenberg, Edward Blaisdell (Lahaina), E. S. Holt, Richard Ivers, G. E. Smithies, C. J. Falk.

SENATORIAL CANDIDATES.

J. M. Dowsett and E. Faxon Bishop are endorsed as candidates for the Senate by the Republican Club of the Second Precinct, Fourth district. John C. Lane has come out, under solicitation of friends, as a candidate for the Senate instead of for the House, to represent the Fifth district. E. R. Adams is still in the field to be the Fifth district nominee for the Senate.

Tenders for Road.

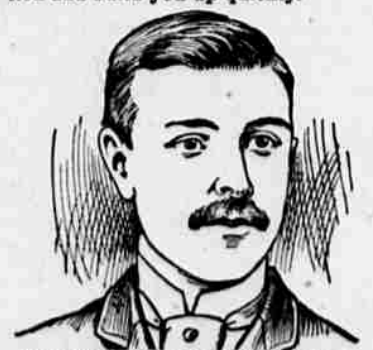
Bids were opened at the Public Works office yesterday for construction of a portion of the road between Paualu and Muolea, Maui, as follows:

L. M. Whitehouse, 120 days.....\$ 9,745

Wilson & Duggan, 150 days.....12,340

Built Me Up

Have you been ill? Are you still weak and discouraged? Do not get strength as fast as you think you should? Then take a good tonic, something that will aid your digestion and build you up quickly.



Here is a letter from Mr. R. Bartholomew, Jr., Mt. Vernon, So. Australia. He also sends his photograph.

"After a very severe attack of rheumatic fever I was left in a very weak condition. It was feared that I could not possibly pull through. I could get no help from any medicine. I feel sure that unless there had been a change just at that time I could not have recovered. But a friend of mine had taken Ayer's Sarsaparilla and knew what a splendid tonic it was. So he urged me to try it. I can now truthfully say that I felt better even after the first dose. It seemed to build me right up from the very start, and in a few weeks my recovery was complete."

There are many imitation Sarsaparillas. Be sure you get "Ayer's." Promptly correct any tendency to constipation or biliousness. Ayer's Pills are sugar-coated, easy to take, mild in action.

Prepared by Dr. J. C. Ayer & Co., Lowell, Mass., U. S. A.

HOLLISTER DRUG CO., Agents.

BANKRUPTCY OF L. HEE

Judge Dole Overrules a Motion to Dismiss Petition.

The contested bankruptcy case of L. Hee was decided by U. S. Judge S. H. Dole yesterday by the overruling of a motion to dismiss the petition of five business houses of Honolulu which asked that L. Hee be adjudicated a bankrupt.

It was represented by the petitioning creditors that L. Hee was indebted to them in the aggregate sum of \$1320.90 in excess of any securities held by them.

Other creditors answered the petition to show that the indebtedness mentioned was not that of L. Hee but of a partnership to which he belonged. They said the partnership had been in existence since January 18, 1897, and had not been dissolved but that its place of business was destroyed in the Chinatown fire. Since that time, they said further, L. Hee had been doing business as an individual in North Kohala; that on August 17, 1933, being indebted to various persons on account of his individual business, he made an assignment of his property in North Kohala for the benefit of all such persons to Hoffschlager Co., Ltd. It was also alleged that he had left the Territory and had no agent within the jurisdiction.

Judge Dole finds that the petitioning creditors have made out a prima facie case as to their holding provable claims against respondent to the extent of over \$500. Their original accounts against him were burned in the Chinatown fire, but evidence was admitted to show that such accounts had existed. They all denied having done business with a partnership, but testified it was with L. Hee as an individual. They supposed Wing Chong Tai, which contestants gave as the name of L. Hee's partner, to be his own business name. However, the decision says:

"It is not necessary for the court to decide this point because it makes no difference as to their right of petitioning for the adjudication of L. Hee as a bankrupt, whether they were creditors of a partnership of which he was a member or whether they were creditors of L. Hee in his individual capacity, a partner of the partnership being liable for all the partnership debts."

Finally, the court rules that the question of the bankruptcy of L. Hee as an individual is the sole object of these proceedings, and the creditors of the alleged partnership, as well as the creditors of L. Hee as an individual, may petition for adjudication.

In accordance with these views, and an act of bankruptcy by L. Hee being admitted by the answer, the motion to dismiss is overruled.

W. Austin Whiting for petitioners; Thayer & Hemenway for contesting creditors.

RAIN FELL LAST NIGHT IN TORRENTS

Shortly after eleven o'clock last night there was a heavy downpour of rain resembling a cloudburst. In five minutes the streets in the business section were afloat. The storm came just after the Sold Pasha audience had got out and scores of people had their clothes ruined. There was a general rush for shelter. It was the first heavy downpour of the season and it brought the recent drought to a sudden end.

CUTS, BRUISES AND BURNS QUICKLY HEALED. Chamberlain's Pain Balm is an antiseptic liniment and when applied to cuts, bruises and burns, causes them to heal without maturation and much more quickly than by the usual treatment. It allays the pain of a burn or scald almost instantly. Unless the injury is very severe it does not leave a scar. For sale by all Dealers and Druggists. Benson, Smith & Co., Ltd., Agents for Hawaii.

HAWAIIAN DAILY WEATHER REPORTS ON MAINLAND

Hawaiian weather reports are now being received daily in all the big cities of the mainland, and according to reports, are proving an important factor in attracting attention to the islands.

E. M. Boyd, secretary of the Hawaii Promotion Committee, who returned yesterday from the Coast, states that the daily reports of the weather in Hawaii will have an excellent effect upon travel. He says that in some hotels such as the St. Francis in San Francisco, the chief clerks are following a plan of which Mr. McMurray of that hotel was one of the pioneers, of keeping on his desk for the information of guests the record of the daily temperature of the leading cities of the world. Honolulu has now been included in this list.

On Wednesday of last week when the temperature in San Francisco had reached 102.2, Hawaiians there were accosted on the street and in hotels with the remark, "Well, you've brought your hot weather with you." One Honolulu offered to bet a bottle

MRS. ALMY WINS PART

Awarded \$1800 Against Cotton Bros. & Co. For House-Boat.

Eighteen hundred and fifty dollars with costs was awarded by Judge Sanford B. Dole to Mary K. Almy in her admiralty suit against E. J. Cotton, J. B. Agassiz and C. E. Cotton, co-partners doing business under the firm name and style of Cotton Brothers & Co. The claim was for \$3500 damages on account of the loss of a house-boat, which was wrecked on the open sea while the libellees were attempting to tow it from Pearl harbor to the port of Honolulu on August 4, 1933.

Carelessness and negligence were alleged against the libellees for the manner of towing the house-boat, it having been placed in a tandem tow between the tugboat and two laden scows, and for careless and negligent selection of the time in which the tow was attempted relative to conditions of wind and sea then prevailing.

In their answer the libellees said they leased the house-boat from the libellant from January 1, 1933, to July 29, 1933, by a written lease, that during all the time mentioned in the libel H. N. Almy, husband of the libellant, was in charge and control of the house-boat and acting as her agent; that the value of the house-boat was, up to August 4, 1933, \$1500; that pursuant to their lease it became their duty on July 29, 1933, to deliver the house-boat to libellant at Pearl harbor, and that she was notified of the termination of the lease so that she might take possession; that at such termination she requested the libellees to remove the house-boat to Honolulu for her convenience; that they agreed to do so but under the express stipulation that they should not be responsible for any loss or damage to the house-boat which might occur during such removal, and that they proceeded to remove the house-boat from Pearl harbor to the port of Honolulu on August 4, 1933. They admit the possession of the house-boat to the tow was complained, but allege due care and good seamanship together with weather not unfavorable, and they account thus for the damage:

"That when the tow was near to Kalia Channel the house-boat suddenly went over on one side and thereupon the libellees towed the same into shallow water and anchored her, and then proceeded to Honolulu with the scows and the persons who had been on the house-boat; that after reaching Honolulu the towing steamer returned to the house-boat and towed her to the port of Honolulu; that the turning over of the house-boat was not due to carelessness or negligence on the part of the libellees, but, as they were informed and believe, was due to the fact that the house-boat was not properly built into the scow but was simply tacked thereto with ten penny nails which became gradually loosened from the rocking of the scow."

Judge Dole quotes the terms of the lease, including a condition "that in case of total loss of the house-boat they (the lessees) will pay to the lessor two thousand five hundred dollars." He discusses conflicting testimony as to whether or not there was an oral agreement between the lessees and Mr. Almy that the former would not be responsible for accident in towing the craft to Honolulu. Expert testimony also conflicting is reviewed on the questions of seamanship, negligence and condition of the house-boat when taken in tow. The court is of the opinion, after citing authorities on liabilities of towing, "that the accident was not unavoidable and that the libellees failed in exercising the care and caution which the circumstances reasonably required and that the damage to the house-boat was due to such failure." From the evidence of witnesses for the libellees there is no doubt in the court's mind "that there was a swell that made it obviously dangerous for the house-boat to go to sea."

On the question of condition of the house-boat the court says:

"That the inherent weakness of the house-boat was not such as to make it unsafe to take her to sea under any conditions is shown by the fact that she was towed from Honolulu to Pearl harbor in the open sea by the libellees within a year before the accident."

A decision in point is quoted where it was held that "the maritime skill and care thus called for is such as is reasonable in that service and under the conditions such as may reasonably be demanded under the peculiar circumstances

and emergencies of the case." The claim of total loss and the full damage stated in the libel was pressed by counsel for the libellant under the rules of practice in maritime insurance. "But," the decision says, "it is doubtful if such rules can be applied to a case of this kind, and if they could, there has been no abandonment of what remained of the house-boat—a scow in good condition—an indispensable condition of recovery for total loss in insurance cases. The United States Reports have some cases of collision in which a tendency is shown to approximate to the rule in marine insurance." In conclusion Judge Dole says:

"The measure of damages in this case is the injury to the house-boat at the time of the accident. Mr. Hughes, who built her, says the scow cost seven hundred dollars and that he would not undertake to put the house-boat back in her old condition as originally constructed less the deterioration of the hull for less than two thousand dollars. Mr. Almy says the original cost was about twenty-two hundred and fifty dollars, and putting her up for libellees' use cost nearly three hundred dollars more making a total of twenty-five hundred and fifty dollars. Why the superstructure should now cost two thousand dollars when it originally cost but fifteen hundred and fifty, or eighteen hundred and fifty with the additions made, the scow having cost seven hundred dollars, was not explained. No evidence has been introduced as to deterioration of the house-boat and yet there must have been some. My estimate of the damages suffered by the libellant, is eighteen hundred and fifty dollars and a decree will be entered for that amount with costs."

A. S. Humphreys and J. J. Dunne, proctors for libellant; R. W. Breckons and Atkinson, Judd & Mott-Smith, proctors for libellees.

MRS. CARTER'S WILL FILED FOR PROBATE

George R. Carter by J. R. Galt, attorney in fact, yesterday filed a petition for probate of the will of Sybil Augusta Carter, deceased, widow of the late Minister H. A. P. Carter. The estate is valued at \$20,000, consisting of stocks, bonds and mortgages.

The will was executed Dec. 3, 1895, in presence of Samuel G. Wilder and Alfred W. Carter. Its first four bequests dispose of all the property of whatever description held in trust for the testatrix by Edward M. Brewer of Boston, Mass., viz:

To her daughter, Frances I. Carter (now Mrs. Crehore of Boston), one-fifth.

To her son George R. Carter, one-fifth.

To her daughter, Agnes Carter Galt, one-fifth.

To her daughter, Cordelia J. Carter, one-fifth.

She bequeathed to her daughter, Frances her kooa bedstead, also a purple amethyst brooch presented to her by her said daughter.

Cordelia J. Carter receives her round kooa dining table and kooa writing desk. George R. Carter is bequeathed the silver punchbowl presented to his father, Minister Carter, by the Honolulu Chamber of Commerce.

To Agnes Carter Galt is given an oval gilt-framed mirror.

Henry A. P. Carter, grandson of the testatrix, receives the painting of Minister Carter in uniform.

By two clauses, respectively, all of her jewelry not otherwise specifically bequeathed, and all of her silverware, crockery, furniture, pictures and books, are bequeathed to such of her children as survive the testatrix, to be divided equally among them, each selecting one piece of the jewelry and one article of the other list, commencing with the youngest and so on to the oldest, continuing in such rotation until all of such property is divided.

All of the residue of her property the testatrix leaves to such of her children as survive her, share and share alike. The concluding directions of the will here follow:

"It is my desire that all of the property now situated at Sweet Home in said Honolulu be kept in use by those of my children who occupy said Sweet Home as long as all consent thereto."

"It is my last desire and request that my children keep that portion of said Sweet Home where the family are buried in good order and condition and when advisable to convey the same to the Cemetery Association."

"I nominate my son, George Robert Carter, to be the executor of this, my last will and testament, and desire that no bond be required of him as such executor."

WHY MOTHERS WORRY

Did you ever hear a mother worry over a plump child? There is no better bank of health for a child to draw from than a good supply of healthy flesh.

Scott's Emulsion not only gives a child weight and plumpness, but it feeds the brain, bones and nerves with strength and active power.

Fewer mothers would worry if they knew more about Scott's Emulsion.

Scott's Emulsion is substituted by cheap emulsions and so-called wines, cordials and extracts of cod-liver oil. They can do you no good and are dear at any price. Why buy them? Scott's Emulsion has been the one reliable preparation of cod-liver oil for nearly thirty years.

We'll send you a sample free upon request. SCOTT BOWNE, 409 Pearl Street, New York.

LESSLIE'S SUIT FAILS

The Court Finds Inter- Island Company Not Liable.

Federal Judge Dole finds that George Leslie is not entitled to any damages, where he claimed \$50,000, against the Inter-Island Steam Navigation Co. for breach of contract of employment and promotion. The decision is on exceptions to amended libel in admiralty, exceptions to the original libel having been sustained on the ground "that the libel showed the agreement to be an ordinary contract for hiring and contained no stipulation fixing any definite period for the termination of the engagement, the rule being that in such cases the contract may be terminated at any time at the election of either party."

Stating the case the court says:

"The amended libel alleges that previous to the engagement, libellant, in addition to the allegations as to his occupation as a mariner and skilful master of steam vessels, was in the city of San Francisco where the wages of officers of coastwise steam vessels were seventy-five dollars a month with board and lodging for the position of second mate, and that he had, previous to the said engagement, secured an appointment as second mate upon one of the said coastwise steam vessels at said wages and board and lodging, but had not, at the time of said engagement, entered upon the discharge of his duties under such appointment," etc.

In the original libel the libellant alleged that he was a mariner and licensed as a skilful master of ocean steam vessels and relied upon his wages as a mariner for his support; that he entered into an agreement with the libellee to work on its steam vessels in the capacity of second mate at fifty dollars a month wages, and his board and lodging, which were worth thirty dollars a month; and the libellee agreed as part of the contract that his employment should be steady with chance of promotion; that he began work under such agreement August 8, 1931, on the steam vessel known as the Keauhou, as second mate thereon; that on September 6, 1931, he was promoted by the libellee to the grade of first mate on the said steam vessel with the pay of ninety dollars a month and his board and lodging.

Exceptions to the amended libel coming on for hearing, counsel for the libellee renewed the contention that the general rule as to contracts of hiring applied, there being no stipulation as to the length of service agreed upon and that the contract was not one in which damages could be given on account of the discharge of the employee.

Judge Dole discusses several authorities, from which he is led to say that if the libellant had been discharged upon his arrival at Honolulu before he had entered upon the duties of his new position the case would have been different. On this view he concludes the decision thus:

"If that had taken place, I should feel that in some way he would be entitled to damages, for to induce a sailor holding an engagement in San Francisco worth seventy-five dollars a month with board and lodging, to cancel such engagement and come two thousand miles to Honolulu, on the promise of steady employment with wages at fifty dollars a month at the start and board and lodging, and then to discharge him on his arrival at Honolulu, would unquestionably be treatment savoring of rank injustice. But as the contract with the libellant was carried out in good faith for a period of over two years and a half, and the stipulation in such agreement that he should have steady employment with chance of promotion being faithfully carried out by promotion to the position of first mate with a raise of wages from fifty to ninety dollars a month and board and lodging as before, before he had been in the service of the libellee for one month, I feel, on the theory that he was entitled to employment under his engagement with the libellee for a reasonable length of time in view of the sacrifice that he made at the inception of the contract by cancelling his engagement in San Francisco and coming to Honolulu, which may be said to support a presumption of an engagement on the part of the employer for such reasonable time as would be a substantial return for such sacrifice, that he had nothing to complain of and has suffered no damages that the libellee is liable for on account of his discharge."

"In accordance, therefore, with these conclusions, the exceptions are allowed."

J. J. Dunne, proctor for libellant; Smith & Lewis, proctors for libellee.

Object of Association.

Besides the usual organic features of a self-governing body, the Waiālae Improvement Association's draft of by-laws contains the following statement of objects:

"The objects of the club shall be the beautifying and improving of the surroundings in the Kaimuki, Palolo and Waiālae districts, such as the planting of trees, the mowandaming and opening of roads, and the obtaining of such government assistance as taxpayers are entitled to, etc."

Frank Harvey has organized Democratic clubs in the seventh and the eleventh precincts of the Fifth district.